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August 28, 2000

Thomas Diggs, Chief  
Air Planning Section  
U.S. EPA Region VI  
1445 Ross Avenue  
Dallas, TX 75202-2733

RE: Comments on Proposed MVEB Revision Policy

Dear Mr. Diggs:

Enclosed for filing in the above rule docket are comments filed on behalf of Environmental Defense. These comments are being filed electronically by delivery to the e-mail address for Guy Donaldson ([donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov)) based on a voice message received from him today. A signed confirmation copy will be sent by U.S. mail.

Thank you for your consideration.

Sincerely,

Robert E. Yuhnke  
Counsel for Environmental Defense

## COMMENTS OF ENVIRONMENTAL DEFENSE ON EPA'S POLICY RE REGARDING SUBMISSION OF MOTOR VEHICLE EMISSIONS BUDGETS

Environmental Defense files these comments in response to EPA's notice announcing a policy requiring states to revise their motor vehicle emissions budgets (MVEBs) following release of the MOBILE 6 model for the estimation of motor vehicle emissions.

As a general matter, Environmental Defense supports a policy of requiring MVEBs to be recalculated when revised MOBILE models are released. To the extent that revisions to MOBILE reflect a more accurate assessment of motor vehicle emissions, the emissions factors in revised versions of MOBILE should be used in SIP demonstrations. However, we are concerned that revised estimates of motor vehicle emissions be accounted for in the air quality modeling and the attainment demonstration if 1) a recalculation of expected MV emissions shows an increase compared to the MV emissions estimates used to demonstrate attainment, or 2) a recalculation is to be used for the purpose of claiming additional emissions reductions that the State seeks to make available to enlarge allowable emissions for other sources, or effectively enlarge the MVEB by using the original budget or any other budget larger than the budget that would be calculated using only a revised MOBILE model.

*not relevant to our no objection*  
We renew our objections to the policy of determining that a MVEB in a submitted SIP is adequate when the SIP from which it is derived does not demonstrate attainment. In the case of Houston/Galveston, EPA determined and announced in the December 16, 1999 notice of proposed rulemaking that the November 1999 SIP submittal received from Texas did not include sufficient emissions reductions to provide for attainment.

Unfortunately, the modeled control strategy in the November 15, 1999 submission, while calling for significant emission reductions in NOx, does not project attainment of the ozone standard. In fact, the control strategy modeling indicates additional emissions reductions are necessary to demonstrate attainment by 2007.

EPA stated that it would not be proposing to determine the approvability of the SIP at this time because Texas had committed to submit additional emissions reductions necessary to provide for attainment by December 2000. Despite the fact that EPA found "that the November 15, 1999 submitted budget is derived from attainment demonstration modeling that does not have sufficient emission reductions identified to result in attainment of the 1-hour ozone standard by 2007," and that the State would not submit additional control measures until December, EPA stated that it would find the 195 t/d NOx MVEB contained in the November 1999 SIP adequate for transportation conformity purposes if the State committed to 1) submitting a list of candidate control measures adequate to meet the emissions shortfall, 2) revising the MVEB in the event any of the additional emissions reductions adopted by the state reduced MV emissions, 3) revising the MVEB 1 year after MOBILE 6 is released, and 4) committing to a mid-course review.

## MVEB FOR HOUSTON-GALVESTON IS NOT ADEQUATE

ED objected to finding the MVEB adequate based on the November 1999 SIP revision, and has since filed suit challenging EPA's adequacy determination. ED objected to giving effect to a MVEB that allowed emissions substantially higher than were likely to be required for attainment because the State had not identified enough emissions reductions from stationary sources to satisfy EPA's shortfall calculation. It was clear before Texas developed a formal SIP proposal that reductions from MV emissions would be required to achieve sufficient additional reductions to meet either EPA's shortfall request or the original emissions reduction target identified by Texas in their May 1998 submission. In addition, ED also argued that further modeling should be performed because EPA's shortfall request was based on assumptions that were not consistent with EPA's modeling requirements as published in 40 CFR Part 51. EPA also stated in the December 1999 notice that specific emissions reductions must be modeled to demonstrate attainment. For all these reasons, the MVEB submitted with the November 1999 SIP could not be relied upon as a budget that would be adequate to provide for attainment.

Texas has not fulfilled EPA's conditions for finding the submitted MVEB to be adequate. The March 14 and April 7 letters from Governor Bush that EPA cited in its May 31 adequacy determination do not include commitments to revise the MVEB one year after the release of MOBILE 6, or to a mid-course review. EPA granted the adequacy determination despite Texas' failure to meet EPA's conditions for approval.

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Now Texas has proposed a revised attainment demonstration and SIP for public hearing and comment. The proposed SIP includes additional emissions reductions from on-road motor vehicles and a revised NOx MVEB to 162.73 t/d (compared to 195 t/d). The reduced MVEB relies upon reductions from measures that include a lower speed limit on high speed facilities (18.27 t/d), diesel emulsion fuel (10.7 t/d), vehicle idling controls (0.92 t/d), TCMs (2.73 t/d), and diesel Nox reduction systems (16.25 t/d). This budget is closer to the level of MV emissions necessary for attainment, although ED continues to believe that total reductions provided in the currently proposed SIP are not sufficient to attain the NAAQS.

The revised SIP proposed by Texas reaffirms that the 195 t/d MVEB EPA found adequate in May is not adequate to provide for attainment. EPA supports its determination of adequacy on the basis of a policy that if Texas is not proposing to obtain emissions reductions from limitations on highway construction, then the MVEB submitted in November 1999 can be used until revised by a new MVEB submitted as part of a SIP that includes sufficient emissions reduction to provide for attainment. This policy is flawed and is in direct conflict with the requirements of the Act and EPA's conformity rules.

The Act requires that SIPs must demonstrate attainment of the NAAQS using photochemical models, and achieve 3% ROP reductions annually until the attainment date. § 182(c)(2)(A) and (B). EPA's conformity rule requires that for MVEBs to be found adequate they must "when considered together with all other emissions sources, [be]

consistent with applicable requirements for reasonable further progress [and] attainment." 40 CFR §93.118(e)(4)(iv). This requirement that MVEBs limit motor vehicle emissions to the levels required for attainment and ROP is necessary to satisfy § 176(c)(1) and (2)(A) of the Act. MVEBs must be set at levels that reflect the "estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan..." The necessary emissions reductions are those necessary for attainment otherwise they will not accomplish the goal of conformity, i.e., compliance with the MVEB "will not ...delay timely attainment of any standard or any required interim emissions reductions..." The 195 t/d MVEB is clearly not consistent with the emissions reductions required for attainment, and has not been evaluated for its adequacy with regard to a ROP SIP revision.<sup>1</sup>

The fact that the list of measures Texas submitted as candidates for further control measures in the SIP did not include limitations on highway construction is not relevant to whether the submitted MVEB is consistent with attainment. Until Texas actually models attainment based on control measures that are adopted and enforceable, EPA cannot have any basis for concluding that limitations on highway construction will not be needed as a SIP strategy.

ED therefore objects to EPA's use of the proposed policy as a way to boot-strap into a way of justifying continued adequacy determinations for submitted MVEBs that violate the Act and the conformity rule.

#### EPA's PROPOSED POLICY RAISES GENERALLY APPLICABLE CONCERNS

EPA's proposed MVEB revision policy recognizes the fundamental deficiency in the policy that finds adequate a MVEB that comes from a SIP that does not provide for attainment. The proposed policy tries to play "catch-up" by requiring a state to correct EPA's error when an inadequate budget is initially found adequate. States are required, as in the case of Texas, to commit to revise their MVEBs after the additional control measures necessary for attainment are added to the SIP. There would be no need for this policy if EPA did not approve inadequate MVEBs in the first place. Thus the proposed policy is a band aid keep a bad policy from compounding itself into the future.

Different aspects of the policy raise different concerns. Commitments to revise the MVEB after additional control measures are added to the control strategy raise concerns primarily about enforceability because the original MVEB found adequate before an adequate attainment demonstration is submitted are not likely to be "approved" budgets in an applicable implementation plan. On the other hand, revised MVEBs submitted after MOBILE 6 is released may well be submitted after the MVEB based on MOBILE 5 has

<sup>1</sup> EPA stated in the December 1999 NPR that a post-1999 ROP SIP had not been submitted by Texas at that time. If such SIP has not been submitted to date, Texas is seriously late since the Act required submission of such a SIP revision by 1994. Since Texas was not included in the Nox SIP call region, EPA's date extends on policy could not reasonably apply. Texas is therefore subject to sanctions for its failure to submit such a SIP revision, and EPA is required to commence a FIP rulemaking to remedy the State's failure. EPA also has an obligation to propose action on the 9% ROP plan which was submitted by Texas.

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## CONCLUSION.

The first section of these comments address issues raised by documents added to the docket for the Houston/Galveston SIP after February 14 and the application of EPA's proposed policy in that nonattainment area. The second section of these comments raise issues of general applicability that need to be addressed by EPA wherever this proposed policy may be applied.

Respectfully submitted,

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